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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,302	11/17/2003	Toshikatsu Fukuju	0397-0470P	1094

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BIRCH STEWART KOLASCH & BIRCH  
PO BOX 747  
FALLS CHURCH, VA 22040-0747

EXAMINER
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SIEFKE, SAMUEL P

ART UNIT	PAPER NUMBER
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1743

NOTIFICATION DATE	DELIVERY MODE
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05/31/2007

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

## Office Action Summary

Application No.

10/713,302

Applicant(s)

FUKUJU ET AL.

Examiner

Samuel P. Siefke

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-75 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-75 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Election/Restrictions*

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-11, drawn to a sample analyzer, classified in class 422, subclass 68.1.
- II. Claims 12-29, drawn to an aspirator, classified in class 422, subclass 100.
- III. Claims 30-35, drawn to a bubbling sample analyzer, classified in class 422, subclass 73.
- IV. Claims 36-39, drawn to a bubble detector, classified in class 422, subclass 83.
- V. Claims 40-45, drawn to a sample rack analyzer, classified in class 422, subclass 62.
- VI. Claims 46-53, drawn to a sample rack, classified in class 422, subclass 104.
- VII. Claims 54-58, drawn to a sample analyzer employing syringes, classified in class 422, subclass 81.
- VIII. Claims 59-63, drawn to a syringe, classified in class 422, subclass 100.
- IX. Claims 64-69, drawn to a sample analyzer employing multiple pumping reservoirs, classified in class 422, subclass 50.
- X. Claims 70-75, drawn to a multiple reservoir with pumps device, classified in class 422, subclass 100.

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The inventions are distinct, each from the other because of the following reasons:

Inventions Group II and Group I are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the claims are directed to a drinking straw, i.e. a plastic straw employed for drinking out of a closed container. The subcombination has separate utility such as aspirating a liquid for sample analysis in a laboratory.

Inventions Group IV and Group III are related as combination and subcombination. In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the device can be employed as a bubble counter for counting bubbles passing through a liquid. The subcombination has separate utility such as analyzing a gas sample that passes through a liquid that strips liquid of a dissolved gas.

Inventions Group VI and Group V are related as combination and subcombination. In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the device can be employed as a simple test tube storage rack. The subcombination has separate utility in an automated conveyer sample analyzer assembly line where the sample rack moves along a conveyer.

Inventions Group VIII and VII are related as combination and subcombination. In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the device can be employed as a syringe for drawing blood. The subcombination has separate utility such as analyzing a plurality of collected samples withdrawn by a syringe pump.

Inventions Group X and IX are related as combination and subcombination. In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the device can be employed as a liquid transfer device, i.e. moving water in a water storage reservoir. The subcombination has separate utility such as analyzing multiple fluid samples in an automated fashion.

Inventions Group I-II and III-IV are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions have different modes of operation, i.e liquid aspiration versus bubble counting.

Inventions Group V-VI and VII-VIII are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions have different modes of operation, i.e. moving a sample rack versus withdrawing a liquid by syringe.

Inventions Group VII-VIII and IX-X are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have

different designs, modes of operation, and effects (MPEP § 802.01 and § 806.06). In the instant case, the different inventions have different modes of operation, i.e., withdrawing a liquid by syringe versus pumping a fluid to and from different containers.

The Examiner has required restriction between combination and subcombination inventions. Where applicant elects a subcombination, and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the

requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel P. Siefke whose telephone number is 571-272-1262. The examiner can normally be reached on M-F 7:00am-5:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Sam P. Siefke

A handwritten signature in black ink, appearing to be 'S P Siefke', with a large, stylized 'S' and 'P'.

May 22, 2007